REMARKS/ARGUMENTS

Claims 1-32 are currently pending in the present application. Claims 1-4, 6, 7, 11-14 and 16-18 have been rejected under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent No. 5,634,006 issued to Baugher et al. Claims 5, 8-10, 15, 19-24 and 27-32 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Baugher in view of U.S. Application Publ. No. 2002/0152319 to Amin et al. Claims 25 and 26 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Baugher, Amin and U.S. Application Publ. No. 2002/0190140 to Makuck. Applicant respectfully traverses the rejection.

In this response, Applicant has amended claims 1, 11, 23, 24 and 27 to state that the time interval, over which aggregate volume of data transfer is monitored, spans at least one week. Applicant has also added dependent claims 33-37 which state that the given time interval spans one month. Support for the foregoing amendments can be found at various passages of the Specification, including page 20, lines 13-16; page 20, lines 22-25; page 24, lines 3-5; page 24, lines 14-19; and page 25, lines 21-23.

As detailed above, Applicant has amended claims 1, 11, 23, 24 and 27 to clarify that detecting the threshold or bandwidth utilization milestone occurs relative to a relatively long time interval--such as a week, or month—and is based on the volume of data transferred, and not on the bandwidth or rate that is currently consumed at any given time. As distinguished from Baugher, embodiments of the present invention allow a network service provider, for example, to monitor the aggregate volume of data transfer associated with a user over a period of time (e.g., a month), and degrade (or otherwise affect) network access if the volume of data transfer (not the rate) in that period exceeds a threshold. As discussed in more detail below, Baugher discloses a

system that allocates bandwidth to individual flows based on requested QoS parameters and the current load (i.e., currently utilized and allocated bandwidth or throughput) on the network.

Baugher, neither alone or in combination with Amin, discloses or suggests the claimed subject matter. Baugher discloses methods and systems that reserve bandwidth for individual data flows initiated by hosts on a token ring network. Specifically, the system of Baugher operates to reserve or allocate bandwidth to individual data flows based on requested QoS parameters, current loading conditions, and existing allocations in the network. Baugher does not disclose a system that affects a characteristic associated with network access after the aggregate volume of data transfer within a given time interval, that spans at least one week, corresponding to a given user crosses a threshold. Amin discloses the deployment of accounting and QoS mechanisms across a computer network. Neither Baugher nor Amin disclose methods or systems that monitor aggregate data transfer for individual users over a time interval that spans at least one week, and affect a characteristic of the network access provided to a first user after the aggregate data transfer within a given time interval corresponding to the first user crosses a threshold value. Rather, as discussed herein, Baugher bases allocation decisions based on current loading and allocation conditions.

Stated in other terms, Baugher (operates on a flow-by-flow basis and allocates bandwidth based on availability). On the other hand, the claimed subject matter is directed to affecting network access based on aggregate volume of data transfer over a given time interval. For example, as Baugher teaches (see Col. 8, starting at line 25), when a requesting station attempts to reserve bandwidth for a flow, an allocation decision is made based on the current loading conditions of the network (in other

words, how much bandwidth (throughput capacity) is currently being used, and how much bandwidth has been allocated to the requesting station. This reservation may fail because the requesting station may have reserved a total amount of bandwidth that exceeds an allocation, or the total bandwidth consumed by all stations may prevent a requested allocation from being fulfilled. Again, however, bandwidth refers to a current rate (usually expressed as bits per second) that can be allocated among stations. However, this has no relation to the volume of data transfer referred to in the claims, which bases its affect on network access based on the aggregate volume of data that has been transferred over a given time interval, not the current bandwidth consumed by a given station or stations, as taught by Baugher. In other words, Baugher allocates bandwidth to a given data flow based on current loading and allocation conditions. The claimed invention, however, can be used to affect network access after a threshold volume of data has been transferred over a given time interval, regardless of the bandwidth currently consumed.

Based on the latest Office Action, Applicant predicts that the Examiner will allege that Baugher inherently discloses the subject matter (or can be modified to achieve the claimed subject matter), since monitoring bandwidth necessarily includes monitoring aggregate data transfer over a given time interval. Such an allegation, however, would be clear error. First, Baugher fails to disclose monitoring aggregate volume of data transfer over a time interval that spans at least one week. Secondly, the proposed modification is not taught or suggested by the cited prior art. Furthermore, modifying Baugher to achieve the claimed subject matter would be inappropriate under the M.P.E.P. and governing Federal Circuit case law, since the proposed modification would render Baugher incapable of achieving its intended purpose. As discussed

above, Baugher discloses a system that enforces bandwidth allocations and QoS to data flows traversing a token ring network. Accordingly, the system of Baugher bases its enforcement decisions on current loading and utilization conditions. Indeed, the time intervals over which Baugher evaluates data transfer are necessarily much shorter than one week, as they are primarily computed to assess current load on the token ring network and to assess whether to admit new flows and enforcement bandwidth allocations to existing flows. To extend the time at which bandwidth is computed and evaluated to one week or more would render Baugher inoperable, as the bandwidth computations would no longer relate to current loading and utilization conditions.

In light of the foregoing, Applicant believes that all currently pending claims are presently in condition for allowance. Applicant respectfully requests a timely Notice of Allowance be issued in this case. If the Examiner believes that any further action by Applicant is necessary to place this application in condition for allowance, Applicants request a telephone conference with the undersigned at the telephone number set forth below.

Date: July 6, 2006

Respectfully Submitted,
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